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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,814	04/17/2001	Olaf Bohme	GR 00 P 1757	8451
24131	7590	07/21/2005	EXAMINER	
LERNER AND GREENBERG, PA			MEW, KEVIN D	
P O BOX 2480			ART UNIT	
HOLLYWOOD, FL 33022-2480			PAPER NUMBER	
			2664	

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/836,814	BOHME ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kevin Mew	2664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Final Action***

***Response to Amendment***

1. Applicant's Arguments/Remarks filed on 1/24/2005 regarding claims 1-11 have been fully considered. Claims 1-11 are currently pending in the application.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-3, 5, 7, 10-11** are rejected under 35 U.S.C. 102(e) as being anticipated by Muratani et al. (USP 6,119,109).

Regarding claim 1, Muratani discloses a method of capturing utilization charges (billing method based on the quantity of data, see col. 8, lines 4-9) in a packet data transmission network (see Fig. 2), which comprises:

acquiring data relating to charges for a transmission session during the transmission session (obtaining the quantity of data for billing processing, see col. 8, lines 9-11);

calculating charges that becomes payable during the transmission session (obtain a charge based on the based on the transmission rate, the quantity of data and the predetermined charge rate, see col. 8, lines 9-13); and

recording the calculated charges when the calculated charges exceed a threshold charge-total (detection is performed when the charge has exceeded a limit during the calculation of charge, see col. 16, lines 6-10).

Regarding claim 5, Muratani discloses the method according to claim 1, which comprises defining a variable threshold charge-total as a decreasing function of time period measured from a last session start or from a last recording (see col. 18, lines 15-18, 21-22).

Regarding claim 6, Muratani discloses the method according to claim 5, which comprises calculating a monotonously increasing charge function in dependence on a data transmission volume since the last session start or the last recording, and effecting a recording if the charge function exceeds the variable threshold charge-total.

Regarding claim 7, Muratani discloses the method according claim 5, which comprises measuring the data transmission volume in bits (see col. 18, lines 23-29; note that it is inherent that 1kbytes is equal to 1024 bytes and each byte is equal to 8-bit and therefore the amount information is measured in terms of bits).

Regarding claim 10, Muratani discloses the method according to claim 1, which comprises calculating the charges payable a timed cycle (see col. 18, lines 15-22).

Regarding claim 11, Muratani discloses the method according to claim 1, which comprises effecting a recording when an increase in the charge total exceeds a limit value (detection is performed when the charge has exceeded a limit during the calculation of charge, see col. 16, lines 6-10).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 2-4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Muratani in view of Schuster et al. (USP 6,360,271).

Regarding claims 2 & 3, Muratani discloses all the aspects of the claimed invention set forth in the rejection of claim 1 above, except fails to explicitly show the method according to claim 1, which comprises varying a value of the threshold charge-total depending on a data speed of the transmission session (the billing charge is calculated based on the data transmission rate, see col. 8, lines 9-13). However, Schuster discloses establishing a baseline fee and adjusting the fee down when there is an increase in transmission delay and/or jitter (note that an increase in transmission delay and/or jitter means a lower data transmission speed). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the information distribution system and billing system of Muratani with the billing

method of Schuster such that billing fee will be decreased based on the decrease in data speed caused by increase in transmission delay and/or jitter.

Regarding claim 3, Muratani discloses all the aspects of the claimed invention set forth in the rejection of claim 1 above, except fails to explicitly show the method according to claim 2, which comprises setting the threshold charge-total lower, the lower the data speed of the transmission session. The motivation to do so is to allow a service provider to compensate for the customers by reducing the charges due to the lower quality of transmission service introduced by the lower transmission speed.

Regarding claim 4, Muratani discloses all the aspects of the claimed invention set forth in the rejection of claim 1 above, except fails to explicitly show the method according to claim 1, which comprises, for transmission sessions with intermittent or interrupted data traffic, generating recordings before the threshold charge-total is reached if the data traffic is suspended. However, Schuster discloses an improved method for billing a packet-switched network due to dynamic jitter or transmission delay by making billing adjustments by taking delay and/or jitter measurement (see Fig. 2 and col. 15, lines 21-29). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the information distribution system and billing system of Muratani with the billing method of Schuster such that billing adjustments are generated based on the delay and/or jitter measurements taken in the data transmission such as the billing adjustment method taught by Schuster. The motivation to do so is to provide an improved way of billing customers by providing a more accurate measurement

of the quality of real-time media transmission due to impact of jitter imposed on packet transmission.

4. **Claims 8-9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Muratani in view of Rakavy et al. (USP 5,913,040).

Regarding claim 8, Muratani discloses all the aspects of the claimed invention set forth in the rejection of claim 5 above, except fails to explicitly show the method according to claim 5, which comprises measuring the data transmission volume in packets. However, Rakavy discloses a computer network (see Fig. 3) in which the users are charged based on the number of network packets the user has received (see col. 6, lines 39-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the information distribution system and billing system of Muratani with the billing method of Rakavy such that the users will be charged based on the measuring the data transmission volume in packets such as the method of charging users based on the network packets as taught in Rakavy. The motivation to do so is to provide an unit of measurement when tracking the amount of information transmitted because the amount of data transmitted can easily be quantified by calculating the number of packets transmitted and each individual data packet size.

Regarding claim 9, Muratani discloses the method according to claim 5, which comprises calculating the data transmission volume from a volume of information transmitted and a number of packets transmitted.

*Response to Arguments*

5. Applicant's arguments filed on 1/24/2005 have been fully considered but they are not persuasive.

Applicant argued that the references fail to show the limitations "recording the calculated charges when the calculated charges exceeded a threshold charge-total" in claim 1, the Examiner respectfully disagrees. The Muratani reference discloses that a detection is performed when a charge has exceeded a limit during the calculation of the charge (see col. 16, lines 8-10), which suggests that the calculated charge is recorded when the charge exceeds a threshold limit. It is noted that whether the billing process will be ended when the charge has reached the limit is irrelevant to what is claimed in the claim. Therefore, the disclosure of Muratani reads on the limitations "recording the calculated charges when the calculated charges exceeded a threshold charge-total." As a result, claims 1-3, 5, 7, 10-11 stand rejected under 35 U.S.C. 102(e) as being anticipated by Muratani et al., claims 2-4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Muratani in view of Schuster et al., and claims 8-9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Muratani in view of Rakavy et al.



*Conclusion*


6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Mew whose telephone number is 703-305-5300. The examiner can normally be reached on 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 703-305-4366. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**WELLINGTON CHIN**  
**SENIOR PATENT EXAMINER**

KDM  
Art Unit 2664